

UNAPPROVED MINUTES
PLANNING COMMISSION

December 10, 2014

A regular meeting of the Planning Commission of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, at 7:00 p.m., on December 10, 2014, there being present the following members of said Commission, to wit: Vicki G. Daulton, Bruce N. Thomasson, Jimmy W. Robertson, Samuel R. Carter, III, and Denise P. King; with Vicki G. Daulton, Chair, presiding; together with James E. Taliaferro, II, Assistant City Manager and Executive Secretary, ex officio member of said Commission; Melinda J. Payne, Director of Planning and Development; Charles E. Van Allman, Jr., City Engineer; Benjamin W. Tripp, Planner; Judy L. Hough, Planner; Mary Ellen Wines, Deputy Zoning Administrator/Secretary; and William C. Maxwell, Assistant City Attorney; and the following business was transacted:

The November 12, 2014, regular meeting minutes were approved as written.

In re: Hold public hearing to consider the request of Nikola Sumenic, property owner, for rezoning the properties located at 805 and 811 Craig Avenue (Tax Map #s 47-4-4 and 38-6-5.1) from RSF Residential Single Family District to RMF Residential Multi-Family District (Continued from the November 12, 2014, meeting.)

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of Nikola Sumenic, property owner, for rezoning the properties located at 805 and 811 Craig Avenue (Tax Map #s 47-4-4 and 38-6-5.1) from RSF Residential Single Family District to RMF Residential Multi-Family District (Continued from the November 12, 2014, meeting); and

WHEREAS, the Executive Secretary further reported that the petitioner and his representative have requested a continuance of the rezoning request to the January 14, 2015, meeting to allow more time to address concerns related to storm water management; and

ON MOTION MADE BY VICE CHAIR THOMASSON, SECONDED BY COMMISSIONER KING, AND DULY CARRIED, the request of Nikola Sumenic, property owner, for rezoning the properties located at 805 & 811 Craig Avenue (Tax Map #s 47-4-4 & 38-5-5.1) from RSF Residential Single Family District to RMF Residential Multi-Family District is hereby continued to the January 14, 2015, Planning Commission meeting – the roll call vote: all aye.

In re: Hold public hearing to consider the request of E. Cabell Brand, Trustee, & Shirley H. Brand, Trustee, property owners, and Vincent A. & Cecelia B. Lilley, property owners, for rezoning the properties located at 701 and 715 West Main Street (Tax Map #s 124-8-7 & 8) from RSF Residential Single Family District to RB Residential Business District

The Executive Secretary reported that this date and time had been set to hold a public hearing to consider the request of E. Cabell Brand, Trustee, & Shirley H. Brand, Trustee, property owners, and Vincent A. & Cecelia B. Lilley, property owners, for rezoning the properties located at 701 and 715 West Main Street (Tax Map #s 124-8-7 & 8) from RSF Residential Single Family District to RB Residential Business District; and

WHEREAS, the Executive Secretary further reported that notice of such hearing had been published in the November 26 and December 3, 2014, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed on December 3, 2014; and

WHEREAS, staff noted the following: the subject properties consist of two lots located directly east of Lake Spring Park, along the north side of West Main Street; the western most property is currently occupied by a single family residence and is approximately 1.83 acres in size; the eastern property is currently occupied by a single family residence, several outbuildings, and is approximately 2.5 acres in size; it also possesses frontage along Boon Street at the rear of the property; this request is to rezone both properties to RB Residential Business District; the owner of Tax Map #124-8-7 states that he would like to pursue the sale of the property as a Homestay Inn (Bed and Breakfast); and it was noted the parking requirement for the Homestay Inn would be five spaces, one for each room provided for guests; and

WHEREAS, Commissioner Carter noted that he would need to recuse himself from the discussion on this item as he and his wife own two parcels in this area, and his son also owns property in the same area; and

WHEREAS, Vince Lilley, property owner of 715 West Main Street, appeared in support of the rezoning request; he noted he thought that his neighbors are all opposed to the request due to the attendance in the room, and he does not want to cause them

any problems; he noted that Mr. Brand, his neighbor, is the original petitioner for the request; he believes that Mr. Brand has an idea for the use of his property; he is not here to advocate for him in the request; his understanding of how he came to be involved in the request was that Mr. Brand contacted City officials about rezoning his property for a potential bed and breakfast as the house is for sale; he is not aware of a specific contract for this type use, but he thinks that Mr. Brand believes that the rezoning will help him to sell the house; the neighbors do not particularly favor the idea; with regards to his property at 715 West Main Street, he thinks that the long term plan of this Commission ultimately sees the four properties between the duck pond and Burwell Inn as the highest and best use as Residential Business, such as light use offices, etc.; he thinks that Bed and Breakfast Inns are included in this category; it seems to him that from Fort Lewis School to Longwood Park, these four parcels are probably the only ones zoned Residential Single Family; as it relates to his property, he and his family are living here and have been rehabilitating and restoring the house, which was a disaster when they purchased it; at this point, they do not have any plans to do anything but live here; however, if the neighbor to his east is going to have his property zoned for business then it seems sensible to have his property zoned that way as well, which he believes is consistent with the long term plan as he stated earlier; if the Commission votes to approve the request, then he would like his property rezoned at the same time; and

WHEREAS, Vice Chairman Thomasson asked the Assistant City Attorney if the Commission should consider Mr. Lilley as a petitioner at this point; Mr. Maxwell noted that this is a fair question as the petition that was filed has Judge Lilley's name on it is but was not executed by his signature; he believes that this can be corrected by Judge Lilley signing the petition since the advertising and everything else has him listed as a petitioner; it is a formality that his signature is not on the petition; he noted that he can sign the petition and execute it at this time; and

WHEREAS, Vince Lilley signed the rezoning petition as a petitioner; Mr. Lilley noted that he wanted to make it clear because various rules require him to do this, but he is here in his individual capacity and he appreciates Mr. Maxwell's reference to his title, but he is here as an individual citizen and property owner and not in any official capacity; and

WHEREAS, there was some discussion about the proposed use of the property at 701 as a bed and breakfast or Home Stay Inn, and it was noted that the application is not limited to this type use but would allow any permitted use in the RB Residential

Business zoning; and

WHEREAS, Commissioner King asked if someone from staff could read the permitted uses under the Residential Business zoning; Mary Ellen Wines noted the Residential Uses are accessory apartments, home occupations, manufactured homes, residential human care facilities, single family dwellings – detached, and townhouses; Civic Uses are administrative services, cultural services, public parks and recreation areas, and religious assembly; Office Use types are general offices; Commercial Use Types are homestay inns and fine arts studios; no Industrial Use types allowed, and Miscellaneous Use types are Amateur Radio Towers and minor utility services; and

WHEREAS, Chairman Daulton noted that Ben Tripp, Planner, had some background information related to the request; Mr. Tripp noted that when the City has a rezoning request, staff asks the property owner to discuss it with their neighbors to find out if there might be others who might be interested in rezoning their properties as well; this is how Mr. Lilley's property came to be included in the request; this helps to transition between zones and to help discourage spot zoning; he noted that both properties are occupied by older single family residences, and the property at 701 has several out buildings, such as the tennis court building; Mr. Brand indicated to staff as he has moved out of the home he has had difficulty selling it and would like the property rezoned so he can pursue the sale of the property as a Home Stay Inn commonly referred to as a Bed and Breakfast; the Zoning Ordinance has a few use and design standards for Homestay Inns, i.e., they are limited to five guest bedrooms, the owner or the owner's agent must live at the home, and the owner has to maintain the appearance as a residential structure; the applicants requested RB Residential Business zoning because it is one of the least intensive zoning categories which permit Homestay Inns and because there is RB zoning across the street between Fourth and Elm Streets; staff is not aware of any construction that is being proposed, but if it were, this would probably require a site plan and landscape buffers, etc. would be dealt with at that time; further, no proffered conditions have been received at this point; and

WHEREAS, Chair Daulton asked if signage would be allowed in this zoning for the Home Stay Inn; Mr. Tripp noted that signage would be allowed which would be determined by the sign ordinance; he noted that the RB zoning was changed some time back to allow only smaller size signs; and

WHEREAS, Chair Daulton asked if there was anyone in attendance to represent

the Brand property, and no one came forward; and

WHEREAS, Phillip Short of 639 Boon Street appeared before the Commission in opposition to the request; he noted that he and his wife have lived at their residence for the last 35 years, and their home is directly across the street from the Brand property; at this juncture Boon Street is 17' wide; the subject properties are currently surrounded by single family residences, and the proposed zoning is not compatible with the current character of the neighborhood; depending on the actual use of the property, the ingress and egress from the properties could significantly increase traffic problems on a narrow section of Main Street, the city's busiest street; east bound traffic has only a single lane on this portion of the street; an increase of vehicles turning left into these properties will back up traffic flowing east until all westbound traffic has passed; this will be a significant problem at certain times of the day as currently westbound traffic backs up from the light at Fourth Street and Main to block the entrances to these properties; the ingress and egress to the Brand property is currently available from Boon Street, and again, Boon Street is only 17' wide where their properties are adjacent; changes from a single family residence status could significantly increase the traffic on Boon Street to access the Brand property, as well as parking along Boon Street; due to the street's narrow width, such parking would inhibit access to the residences on Boon Street; the parking would also inhibit access to Boon Street homes by emergency response vehicles, especially firefighting vehicles; blockage of Boon Street was a frequent occurrence in the past when the Brands invited guests to use their tennis courts; finally, the Brand property includes a non-inhabited, industrial style building previously used as an indoor tennis court; if this building were to become available for business use, there are many, many uses which might fit into the letter of business residential zoning but which would be totally inappropriate for other single family residences in the neighborhood; he further noted that the building has been the subject of controversy among the neighborhood for quite some time; once the zoning of the property is changed, there are too many opportunities for the building to be used for things that are not consistent with a residential neighborhood; and

WHEREAS, Walter "Buddy" Pierce, property owner of 710 and 714 Boon Street, appeared before the Commission in opposition; he presented a petition to the Commission signed by 23 residents that represent 18 homes in the surrounding area; he noted he appreciated the Commission's service to the community by serving as he knows this is a difficult thing to do at times; he further noted that he knows Vince Lilly and considers him a great neighbor; the neighbors have problems with the proposed change; first, Section 106-208.1 of the Zoning Ordinance states this type of zoning

should be a benefit to the neighborhood residents, and they do not see any benefit whatsoever in changing the zoning; second, they have a concern about the historical view from Lake Spring Park, and they have asked the Historical Society to take a look at this; third, they are concerned about new parking lots being built and water runoff from them; there is already water runoff problems from the tennis courts that goes into the Bowles yard, which has never been addressed even when neighbors complained; fourth, they are concerned about additional noise and traffic; fifth, the possible devaluation of their properties and the views from their properties looking onto businesses; they are concerned about the tennis court building being turned into some kind of warehouse; Boon Street is very narrow, this is a great community, and they do not want this to change; and

WHEREAS, B. K. Short of 639 Boon Street appeared in opposition; she noted that they moved into their house almost 35 years ago; the rear entrance to the Brand property is directly across from their driveway; each week brought a steady stream of work vehicles or tennis players, all of whom parked on Boon Street; if she was out, she could not return to her house, and if she was at home, she could not leave because of all the vehicles blocking the road; West Salem Elementary called her one day to tell her that her seven-year-old daughter was sick and that she needed to come and get her; she noted that her daughter is 34 now, and it still upsets her -- she could not leave her house and go pick up her sick child; she loves her quiet dead-end street and she loves knowing that emergency vehicles can reach her; she knows what will happen when the Brand property goes commercial; and she asked the Commission to consider the rezoning carefully; and

WHEREAS, Daniel Hart of 645 Boon Street appeared in opposition to the request; he noted that the main reason that Boon Street is so narrow was that it was just a path up to the oldest cemetery in Salem, West Hill; it was not built to be a street, and this is part of the reason they keep talking about it being just 17' wide; it is a problem; he has lived at his residence for almost 20 years, and he has experienced the same problems the Shorts have with regards to the parking; there is no place to get off the road -- it is possible to get only partially off the road; he noted that a Bed and Breakfast sounds kind of like a furry puppy you bring home but if you only have five bedrooms to let out for a \$1 million property, he does not see where this is going to go; it is a Bed and Breakfast one day and then the next it is another Walmart or something; the other point he was thinking about is the use of the park, and people taking pictures of the gazebo, etc., and what it could look like with a neon sign behind the pictures they are taking; and

WHEREAS, Margie Bowles of 650 Boon Street appeared in opposition; she noted that she can only reinforce what has already been said; it seems to her that Mr. Brand has created a problem for himself in that he erected the building in the first place on the residential property; now he is in a jam and needs to sell the property and is asking the City to pull him out of the jam that he has created for himself; in the meantime, the neighbors are directly effected; she has had to deal with serious water runoff, which she has pictures of if anyone wants to see them; the water has been standing in her back yard – runoff from the metal building that Mr. Brand erected; the parking may become more of an issue than it already has been if a business is allowed to occupy the property; additional parking lots would have to be built more than likely which will create additional water runoff; she further noted that Mr. Brand's plans are not in the best interest of the neighborhood; and they are united in their effort to ask the Commission to deny the request and they very strongly oppose it; and

WHEREAS, Chair Daulton asked staff if there is a way to close off the entrance on Boon Street so that it is not used; Mr. Van Allman noted that this is a good question; it is an existing entrance and the only way it could be legally closed would be with the agreement of the property owner or if there is a very good case for safety; he further noted that it would be a very difficult thing to do over the objection of the property owner; this would depend on the use also; if we are talking about a Bed and Breakfast with a limit of 5 cars, it would probably be

a tough battle; if it involved say 10, 20 or 30 cars, then it would be easier; the property owner would have to be in agreement; and

WHEREAS, Carl Haffley of 620 Boon Street, whose property borders the Brand property on the back side, appeared before the Commission; he noted that 21 years ago they built a new home on the open land that was there; four years ago he appeared before the City to get an approval to build a smaller single family home closer to Boon Street because they needed something smaller; they were asking for a change in zoning so that he could build the structure on Boon Street but the current zoning requires a setback of 50' from the center of street; he believes that this regulation was passed after Mr. Brand built an industrial building that he called a tennis court; so, he was not able to build his home even though he had proper frontage and enough acreage to do this; his concern is whether it matters who brings the petition to change the zoning in the City of Salem since he was denied; he noted that the people bringing the petition before the City now probably have far better credentials than he does;

further, his concern is does the request benefit the community in which this change may occur; regardless of what the original petition may outline to the City, once the zoning is changed and say the original business fails for whatever reason, then their concern will be reinforced that something else could occur here that would be inappropriate for the community; and

WHEREAS, Chair Daulton noted when the City updated the Comprehensive Plan and Zoning Ordinance several years ago, the future land use for these properties was Residential Business District and the City felt this was the best land use at that time; Cabell Brand came forward and asked the City to change it to Residential Single Family; she has a concern that there is no one at the meeting representing Mr. Brand to answer any questions; Vice Chair Thomasson noted that he agreed with the Chair; Chair Daulton said she feels that the Commission needs to hear something from Mr. Brand or his representative; and

WHEREAS, Vice Chair Thomasson noted this is the first time as a Commissioner that he has been asked to vote on a rezoning when the petitioner is not in attendance; he noted that he realizes Mr. Lilley is present almost by default; he further noted that this does not seem appropriate; and

WHEREAS, Commissioner Robertson noted that it is beneficial for the petitioner or a representative to be at the meeting because the concerns that were brought up at the meeting could be addressed, which would hopefully make the neighbors feel better about certain parts of the request, i.e, parking, traffic flow, signage, landscaping, etc.; without a presence it is hard for the Commission to make an appropriate decision in the matter; and

WHEREAS, Commissioner King noted that several serious situations have been presented this evening not the least of which is the Boon Street situation and additionally, the water runoff is a major problem; and

WHEREAS, Chair Daulton noted that the Commission is not comfortable voting on the request; and

WHEREAS, Mr. Maxwell noted there is no one here to request a continuance, and it has been put before the Commission to make a decision; he further noted the decision that is made this evening will be a recommendation which will go before City Council and maybe some of the issues can be addressed before that time; he gathers

that the Commission's position would be that they feel they do not have enough information before them to decide affirmatively; and

WHEREAS, it was noted that the public hearing had not been closed; Chair Daulton asked if there was anyone else to speak on the request; and

WHEREAS, Vince Lilley, property owner at 701 West Main Street, noted that he wanted to make it clear that he was piggy backing on the request, and he will withdraw his request and then the only comments in support of any petition were his comments regarding his property; he noted that he wants to be a good neighbor, and he is just looking out for his property to categorize it the same as any other properties on Main Street; also to make things clear, he never wants anyone to do anything for him because of what he does for a living, and if that was the case, he thought about withdrawing earlier in the meeting; and

WHEREAS, Chair Daulton noted that the Commission makes a recommendation to City Council and Council will make the final decision in the matter on January 12, 2015, at 7:30 pm.;

Mr. Lilley noted he wanted to clarify himself; if the request is going forward to Council, he wants to protect his property interest and if Mr. Brand's property is going to be Residential Business then he wants his to be Residential Business; Mr. Maxwell noted his suggestion is that he should not withdraw his petition; Mr. Lilley noted he is withdrawing his comments in support, but he is not withdrawing his property from the request; and

WHEREAS, Margie Bowles noted that the Commission mentioned they needed a representative for Mr. Brand to answer questions, but it has also been stated that as far as anyone knows there is no future use planned for the property – Mr. Brand is simply trying to rezone to sell the property so a potential purchaser can decide what type of business will go here; so, if there was anyone here to represent Mr. Brand, they still would not be able to

answer the questions; it was noted that there is a motion for denial of the request on the floor which would then be referred to City Council;

ON MOTION MADE BY VICE CHAIR THOMASSON, SECONDED BY COMMISSIONER KING, AND DULY CARRIED, the request of E. Cabell Brand, Trustee, & Shirley H. Brand, Trustee, property owners, and Vincent A. & Cecelia B.

Lilley, property owners, for rezoning the properties located at 701 and 715 West Main Street (Tax Map #s 124-8-7 & 8) from RSF Residential Single Family District to RB Residential Business District is hereby denied – the roll call vote being as follows: Mrs. King – aye, Mr. Carter – abstaining, Mr. Robertson – aye, Mr. Thomasson – aye, and Mrs. Daulton – aye.

There being no further business to come before the Commission, the same on motion adjourned at 7:41 p.m.

Chair

Executive Secretary